

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

In re the Marriage of LESLIE JEAN  
BUTLER and IMANI DEAN BUTLER.

H049004  
(Santa Clara County  
Super. Ct. No. 2011-5-FL000975)

LESLIE JEAN BUTLER,

Appellant,

v.

IMANI DEAN BUTLER,

Respondent.

The focus of this appeal is a three-page stipulation concerning the disposition of the parties' community property residence. Respondent Imani Butler and appellant Leslie Butler signed the stipulation in May 2012, while their dissolution action was pending, and the stipulation was signed by a judge and entered as a court order. Under the stipulation, Imani quitclaimed the residence to Leslie with the proviso that she was to deed it back to the community 12 months later if she had not succeeded in removing Imani's name from the loan on the residence by modification or refinancing. The stipulation also provided for the sale of the residence. Leslie obtained a modification of the loan, but the modification did not remove Imani's name from the loan. Leslie did not deed the residence back to the community at the end of the 12-month period. In 2016,

Imani obtained a court order requiring Leslie to deed the residence back to the community and requiring that the residence be sold. Leslie again failed to comply. After much additional litigation, in 2021 the court sanctioned Leslie under Family Code section 271, appointed the clerk of the court to sign the deed back to the community, and ordered the residence sold.

Leslie did not challenge the 2012 or 2016 orders, but she challenges the court's 2021 orders. She contends that (1) the evidence did not support the court's finding that she had failed to remove Imani's name from the loan, (2) the court lacked jurisdiction over the residence, (3) the court misinterpreted the stipulation, (4) the court erroneously found that the residence was community property, (5) treating the residence as community property after she had paid the loan payments from her separate property for several years would be unjust enrichment and inequitable, (6) the court erred in rejecting her laches claim, (7) the court abused its discretion in refusing to vacate the prior orders enforcing the stipulation, (8) the court abused its discretion in imposing sanctions, and (9) the court erroneously deprived her of sufficient time to present her case. We reject her contentions and affirm the court's 2021 orders.

## **I. BACKGROUND<sup>1</sup>**

Leslie and Imani married in 1992 and purchased the residence for \$330,000 in 1998. They paid a \$17,000 down payment and obtained a loan for the remainder of the purchase price.<sup>2</sup> They refinanced the original loan in 2005 and again in 2007. The principal amount of the 2007 loan was \$468,000. The couple obtained a \$100,000 home

---

<sup>1</sup> This appeal arises from 2021 orders made after an unreported 2020 trial. A settled statement is the only record of what transpired at the trial. Imani presented his case as an offer of proof supported by exhibits, and Leslie presented cross-examination.

<sup>2</sup> Although the settled statement stated that Imani had contributed his separate property to pay the down payment, Imani's trial brief asserted that "[t]he source of the downpayment was marital earnings." We need not resolve this discrepancy.

equity line of credit (HELOC) in 2006, and they ultimately borrowed \$77,851.67 on the HELOC. Both of them were signatories to the 2005 and 2007 notes and the HELOC.

The couple separated on December 16, 2011. At that time, they owed \$468,000 on the 2007 loan and \$76,000 on the HELOC secured by the residence.<sup>3</sup> Imani moved out of the residence, and Leslie remained in the residence.

At the time of the May 2012 stipulation, Leslie was seeking to have Imani contribute to the payments and arrearages on the loans on the residence and sign a loan modification application. Imani's position was that he would not quitclaim the residence to Leslie unless he was "off the loan." In order to resolve their dispute concerning the residence, Imani's attorney prepared the May 2012 stipulation. Imani had mixed feelings about the stipulation because he wanted to be free of any obligation on the loans on the residence, but he felt that Leslie was getting the better end of the bargain by getting to stay in the residence with reasonable mortgage payments. Imani agreed to the stipulation because he wanted to "resolve the case."

The May 2012 stipulation, which was signed by a judge and entered as a court order, provided that the residence would be conditionally "assigned" to Leslie "as her sole and separate property." However, the stipulation further provided: "5) [Leslie] must remove [Imani] from the first mortgage within twelve months by modifying the loan to remove his name or refinancing in her name alone. [¶] 6) In the event [Leslie] is unable to modify the loan, the property will be sold, at a short sale if necessary. Both parties will cooperate in moving forward with a short sale in the event [Leslie] is unable to modify the loan so as to place the loans into her own name at a monthly payment she

---

<sup>3</sup> In April 2013, the lender charged off the unpaid balance of \$76,178.99 on the HELOC. The record does not explain why the principal amount of the 2007 loan did not decline between 2007 and 2011.

can afford. [¶] . . . 9) In the event [Leslie] is unable to complete a loan modification or refinance, she will deed the property back to the community.”

Imani immediately complied with the stipulation’s terms by quitclaiming the residence to Leslie. After Imani quitclaimed the residence to Leslie, he paid nothing toward the loan payments, HELOC payments, taxes, insurance, or any other expenses for the residence. Substantial arrearages accrued on the loan on the residence during the period from December 2011 to December 2012. A status-only judgment of dissolution was entered in August 2012, and judgment was reserved on all other issues.

In December 2012, Leslie obtained a modification of the loan on the residence, which reduced her monthly payments. The modification agreement identified the borrowers as Leslie and Imani and stated that it “amended and supplemented” the 2007 loan documents. The 2012 modification agreement modified the maturity date, the principal balance, the interest rate, and the monthly payments for the loan. It further provided that these modified terms would “supersede any provisions to the contrary” in the 2007 loan documents. The modification agreement stated that it was not necessary for a coborrower to sign the modification agreement if “the borrower and the co-borrower are divorced and the property has been transferred to one [signing] spouse in the divorce decree,” but “the non-signing spouse may continue to be held liable for the obligation under the [2007] Loan Documents.” It also provided: “[A]ll terms and provisions of the [2007] Loan Documents, except as expressly modified by this Agreement, remain in full force and effect; nothing in this Agreement shall be understood or construed to be a satisfaction or release in whole or in part of the obligations contained in the Loan Documents . . . .” Although there was a signature line for Imani at the end of the modification agreement, Imani did not sign the agreement or any documents associated with it and was not a party to the modification agreement. Leslie did not deed the residence back to the community when the May 2013 deadline passed.

In January 2016, Imani filed a request for orders requiring Leslie to deed the residence back to the community and directing that the residence be immediately sold. Leslie responded by asking the court to give her 12 more months to remove Imani's name from the loan. At the April 2016 hearing on Imani's request, Leslie admitted that "his [(Imani's)] name is on the loan . . . ." "His name is still on the loan."<sup>4</sup> She argued that it was "impossible" to remove Imani's name from the loan because "my credit was not strong enough" to do so. Imani stipulated at the April 2016 hearing that the sale proceeds would be subject to "a Moore Marsden Claim," and the court noted that "it might be a [Family Code section] 2640 claim." The court granted Imani's request and ordered "that the property be deeded back, and the property listed for sale." On May 5, 2016, the court ordered Leslie to "deed the real property . . . back to the community immediately" and ordered that "[t]he real property . . . be immediately listed for sale and sold."

Leslie did not appeal from the May 2016 orders, and she did not comply with those orders. Leslie apparently refinanced the loan on the residence in December 2018 without notifying Imani. In February 2019, Imani sought enforcement of the May 2016 orders and requested sanctions and attorney's fees of \$10,000 under Family Code section 271 due to Leslie's failure to comply with the court's orders. Leslie filed a responsive declaration setting forth the basis for her opposition to Imani's request for sanctions.

After a March 2019 hearing, the court found that there was no need for any further orders concerning the transfer of title and sale of the residence because the May 2016 orders remained in effect. However, the court "STAYED" those orders "to allow counsel

---

<sup>4</sup> In 2017, Leslie sent an e-mail to Chase bank asking it to take Imani's name off of the loan and explaining that the bank had told her that it could not do so because her "credit score is too low."

to discuss resolution which should include FC 2640 and Moore-Marsden claims.” The stay did not lead to a resolution.

Leslie notified Imani that she would be presenting expert witnesses on the current and “historical” fair market value of the residence and on “separate/community property claims and reimbursement requests” at the next hearing. Imani filed an in limine motion seeking to exclude evidence supporting her reimbursement claims due to her “repeated and willful refusal to comply” with the court’s orders. He identified the only remaining issues as (1) the sale of the residence, (2) Leslie’s reimbursement claims, and (3) Imani’s request for Family Code section 271 sanctions. He argued that Leslie was not due any reimbursements because she had had exclusive use of the residence during the entire period since separation. Imani’s October 2019 trial brief sought \$25,000 in Family Code section 271 sanctions, and he argued that Leslie had the ability to pay that amount out of the proceeds from the sale of the residence.

In November 2019, Leslie filed a claim for breach of fiduciary duty against Imani claiming that Imani had failed to make payments on the 2007 loan and the HELOC, had used the HELOC for noncommunity purposes, and had failed to divide his retirement account “accruals” with Leslie. In March 2020, Leslie filed a request that the court vacate the May 2016 orders based on laches because Imani had waited almost three years before seeking those orders after the 12-month period set forth in the May 2012 stipulation had expired.<sup>5</sup> She contended that the remaining issues were (1) whether the prior orders should be vacated, (2) the value of Imani’s community property interest in the residence, and (3) her breach of fiduciary duty claims. She later sought to expand the issues to include allegedly undivided community property retirement accounts.

---

<sup>5</sup> She declared in support of her request to vacate that she had fully complied with the May 2012 stipulation. She also asserted that she had not understood the stipulation, had signed it under duress, and believed it was unfair.

The evidentiary portion of the trial that led to the orders at issue in this appeal was held on November 30, 2020, and the court heard closing arguments on December 3, 2020. Imani's case was presented in less than 30 minutes. Leslie's case consumed the remainder of the day. Neither party requested additional time to present evidence.

The court issued a February 2021 statement of decision finding in favor of Imani. The court found that Leslie had failed to comply with both the 2012 stipulation and the 2016 orders by failing to take Imani's name off of the 2007 loan within 12 months of the 2012 stipulation. The clerk of the court was appointed to execute the necessary deed to transfer the residence back to the community, and the court ordered that the residence be listed for sale at a price of no less than \$800,000. It found that the value of the residence was \$812,000. The net sale proceeds were to be held in trust pending allocation.

The court ordered Leslie to pay sanctions of \$10,000 out of the sale proceeds under Family Code section 271 due to her "willful failure to comply" with orders. The court explicitly rejected Leslie's laches claim and denied her request that it vacate the 2012 and 2016 orders. "The Court does not find that the delay in this case warrants a forfeiture of [Imani's] rights." The court also found that there was "insufficient evidence" to support Leslie's breach of fiduciary duty claims. The court reserved any issues about Family Code section 2640 claims and "Moore-Marsden" claims, and Leslie's contentions regarding retirement accounts.

In March 2021, Leslie filed a motion for a new trial and a request for changes to the statement of decision. She claimed she had been deprived of due process because the court had not given her "the opportunity to fully present her case." She also claimed that the court had "misinterpreted the stipulation." Leslie requested a settled statement concerning the events at the unreported November 2020 trial. The hearing on her motions and requests was set for May 19, 2021.

Imani contended that the new trial motion was not timely filed and that the court had lost jurisdiction to rule on the motion. On April 7, 2021, Leslie filed a notice of

appeal from the court's February 2021 orders. On May 19, 2021, the court heard and denied Leslie's new trial motion and granted her request for a settled statement. On May 24, 2021, the court issued a settled statement.

## **II. DISCUSSION**

### **A. *Substantial Evidence***

Leslie claims that the court's finding that Imani's name was not removed from the loan was not supported by substantial evidence because his testimony concerning whether the loan *continued to appear on his credit report* was hearsay that was the subject of a sustained hearsay objection at trial.

Leslie's claim is inapt. The stipulation said nothing about credit reports. The issue was whether Leslie removed Imani's name *from the 2007 loan*. The modification agreement itself, which was in evidence, expressly established that Imani's name was *not* removed from the 2007 loan by the modification, and Leslie repeatedly admitted in open court after the expiration of the 12-month period specified in the stipulation that she had *not* been able to remove Imani's name from the 2007 loan due to her lack of sufficient credit. The 2012 stipulation required Leslie to remove Imani's name *from the 2007 loan* by May 2013 or else deed the residence back to the community. She failed to remove his name from the 2007 loan by May 2013, and therefore she was obligated to deed the residence back to the community. The trial court's finding that she had not complied with the stipulation was supported not just by substantial evidence but by undisputed evidence.

### **B. *Jurisdiction and Family Code section 2550***

Leslie claims that Family Code section 2550 precluded the trial court from characterizing the residence as community property and from finding the date of division to be December 3, 2020, because the May 2012 stipulation was a "written agreement" between the parties that the residence would be her separate property.



Family Code section 2550 provides: “Except upon the written agreement of the parties, or on oral stipulation of the parties in open court, or as otherwise provided in this division, in a proceeding for dissolution of marriage or for legal separation of the parties, the court shall, either in its judgment of dissolution of the marriage, in its judgment of legal separation of the parties, or at a later time if it expressly reserves jurisdiction to make such a property division, divide the community estate of the parties equally.”

The premise for Leslie’s claim is lacking. The May 2012 stipulation was a “written agreement of the parties,” but it did not provide that the residence would be her separate property if she failed to satisfy the stipulation’s conditions within the stipulated 12-month period. When she failed to satisfy those conditions within the 12-month period, she was obligated to deed the residence back to the community. Accordingly, by the parties’ written agreement, the residence was community property as of May 2013. The court did not lack jurisdiction over the residence, and it was free to divide the community property residence, an issue upon which it had reserved jurisdiction, at the time of the December 2020 conclusion of the trial.

### ***C. Interpretation of Stipulation***

Leslie asserts that the trial court misinterpreted the stipulation. She maintains that the trial court erroneously construed the stipulation to require her to “refinance” when the stipulation also permitted her to “modify” the loan. The stipulation required Leslie to remove Imani’s name from the loan by modification or refinancing. Although she entered into a modification agreement, she did not remove Imani’s name from the loan. While the trial court’s wording in its statement of decision did not include the word “modify,” the omission was not substantive. The modification agreement indisputably established that Leslie did not remove Imani’s name from the loan by modification. By failing to remove Imani’s name from the loan by May 2013, *either by modification or refinance*, Leslie triggered the stipulation’s provisions requiring her to deed the residence

back to the community. The trial court's failure to include the word "modify" was not relevant to its determination that Leslie had failed to comply with the stipulation.

Leslie also claims that the stipulation should be rescinded because she misunderstood it. Not only was the stipulation clear that she was required to remove Imani's name from the loan, she repeatedly admitted that she knew that she had failed to do that. Leslie did not demonstrate in the trial court that the stipulation itself was invalid due to her lack of understanding. Although Leslie now insists that the modification in fact removed Imani's name from the loan because he did not sign the modification agreement, the modification agreement itself indisputably provided that Imani's name remained on the 2007 loan.

Leslie argues at great length that "California law" establishes that Imani was not liable for the 2007 loan after he signed the quitclaim deed in May 2012. She cites Family Code sections 914, 916, 2624, and 4301. Family Code sections 914 and 4301 have nothing to do with the facts here. Family Code section 916 applies after the division of community property, which was not what the stipulation accomplished since the quitclaim deed was conditional. The same is true of *In re Marriage of Ramirez* (2011) 198 Cal.App.4th 336, which Leslie also cites. Family Code section 2624, which concerns post-separation debts, is irrelevant because the 2007 loan was incurred during the marriage. None of the other cases Leslie cites is relevant here. *CMRE Financial Services, Inc. v. Parton* (2010) 184 Cal.App.4th 263 concerned debts incurred by one spouse after separation, which is not the situation here since the 2007 loan was a debt of both spouses incurred during the marriage. *Litke O'Farrell, LLC v. Tipton* (2012) 204 Cal.App.4th 1178 did not concern a conditional stipulation, but instead a marital settlement agreement, which Imani and Leslie did not execute. Leslie's reliance on Civil Code section 1624 is also inapt. While Imani was not bound by the modification agreement because he did not sign it, he remained bound by the 2007 loan, which he had

signed and which the modification agreement expressly preserved except as to certain modified provisions.

***D. Order That Residence Be Sold and the Proceeds Divided***

Leslie maintains that the trial court erroneously construed the stipulation to authorize that the residence be sold. The stipulation expressly provided that, if Leslie failed to remove Imani's name from the loan, "she will deed the property back to the community" and "the property will be sold, at a short sale if necessary." She claims that the parties to the stipulation did not contemplate a sale if she achieved a modification that did not remove Imani's name from the loan. The language of the stipulation is not amenable to this construction. It provided that the residence would be sold if she did not remove Imani's name from the loan by either modification or refinance. The trial court did not misconstrue the stipulation.

Leslie also contends that the trial court erred in construing the stipulation to authorize the division of the proceeds. Since the stipulation required that the residence be deeded back to the community and sold, the proceeds would be community property that would necessarily need to be divided between the parties in some manner. As the allocation of those proceeds had not occurred at the time of the February 2021 orders appealed from, the propriety of such allocation is not before us in this appeal so we do not reach Leslie's claims concerning the appropriate allocation of the proceeds.

***E. Residence is Community Property***

Leslie contends that the trial court erred in characterizing the residence as community property. It is undisputed that the residence was community property prior to the stipulation, and the stipulation only conditionally permitted Leslie to attempt to retain it as her separate property if she could remove Imani's name from the loan by May 2013. She failed to do so, with the result that she was obligated to return the residence to the community. The trial court did not err in characterizing the residence as community property, which it reverted to as of May 2013. Whether any of the proceeds will be

allocated to Imani after any “Moore-Marsden claims” and any other reimbursement issues are resolved is not before us in this appeal because those issues were reserved for future determination.

***F. Unjust Enrichment and Equity***

Leslie argues that it would be unjust to divide the proceeds of a sale of the residence equally. However, the court reserved the issue of how the proceeds will be divided, so it is premature to assert that the division of those proceeds is unjust or inequitable.

***G. Laches***

Leslie maintains that the trial court erred in rejecting her claim that laches precluded Imani from enforcing the stipulation.

“ ‘Laches is an equitable defense based on the principle that those who neglect their rights may be barred from obtaining relief in equity. [Citation.] “ ‘The defense of laches requires unreasonable delay plus either acquiescence in the act about which plaintiff complains or prejudice to the defendant resulting from the delay.’ ” [Citation.] [¶] Laches is a question of fact for the trial court . . . .’ ” (*Feduniak v. California Coastal Com.* (2007) 148 Cal.App.4th 1346, 1381.)

Imani waited about two and a half years after the May 2013 deadline before pursuing enforcement of the stipulation. The parties had separated in December 2011. Leslie had exclusive use of the residence from then on, and her opportunity to obtain separate property ownership of the residence expired in May 2013, when she failed to take Imani’s name off the loan. At that point, she had been in exclusive possession of the residence for a year and a half. The fact that Imani did not immediately seek the sale of the residence, where Leslie and at least one of their children were residing at that time, was not unreasonable. He could have reasonably believed that permitting Leslie to continue to reside in the residence with their child for a period of time was in everyone’s

best interest. Under these circumstances, we find no error in the trial court's finding that Imani's delay was not unreasonable.

***H. Denial of Motion to Vacate***

Leslie contends that the trial court erred in refusing to vacate the prior orders enforcing the stipulation. She gives a litany of reasons, but only laches and mistake were ever asserted as grounds below, and the trial court rejected her arguments. Since the record does not provide a basis for disturbing the trial court's rejection of her request to vacate, we must uphold its denial of that request.

***I. Sanctions***

Leslie challenges the court's imposition of \$10,000 in sanctions under Family Code section 271. She claims that this award was not supported by evidence that she had unreasonably failed to comply with the court's prior orders, was an abuse of discretion, and was imposed in violation of her right to due process.

Family Code section 271 provides: “(a) Notwithstanding any other provision of this code, the court may base an award of attorney’s fees and costs on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys. An award of attorney’s fees and costs pursuant to this section is in the nature of a sanction. In making an award pursuant to this section, the court shall take into consideration all evidence concerning the parties’ incomes, assets, and liabilities. The court shall not impose a sanction pursuant to this section that imposes an unreasonable financial burden on the party against whom the sanction is imposed. In order to obtain an award under this section, the party requesting an award of attorney’s fees and costs is not required to demonstrate any financial need for the award. [¶] (b) An award of attorney’s fees and costs as a sanction pursuant to this section shall be imposed only after notice to the party against whom the sanction is proposed to be imposed and opportunity for that party to be heard. [¶] (c) An award of

attorney's fees and costs as a sanction pursuant to this section is payable only from the property or income of the party against whom the sanction is imposed, except that the award may be against the sanctioned party's share of the community property."

"A sanction order under Family Code section 271 is reviewed under the abuse of discretion standard. ' "The trial court's order will be overturned only if, considering all the evidence viewed most favorably in support of its order, no judge could reasonably make the order . . . ." [Citation.]' [Citation.]" (*In re Marriage of Burgard* (1999) 72 Cal.App.4th 74, 82; accord *In re Marriage of Feldman* (2007) 153 Cal.App.4th 1470, 1478.)

The record unerringly demonstrates that Leslie's intransigent refusal to obey repeated court orders over a period of more than seven years was unreasonable and that her conduct prolonged and increased the cost of the litigation between the parties while frustrating any hope of settlement. She not only failed to comply with the 2012 stipulation and refused to obey the court's 2016 orders enforcing the stipulation, but she also continued to file additional litigation that attempted to reanimate issues that had already been definitively resolved against her. In light of this evidence, the trial court did not abuse its discretion in determining that sanctions were warranted under Family Code section 271.

Leslie argues that the court's sanctions order was invalid because the court failed to comply with California Rules of Court, rule 5.14. She is mistaken. Rule 5.14 does not apply to Family Code section 271 sanctions. (*Shenefield v. Shenefield* (2022) 75 Cal.App.5th 619, 630.)

Nor is there any basis for her claim that the court violated her right to due process by imposing sanctions. "Due process requires a party be given notice and an opportunity to be heard before a court imposes sanctions under section 271. [Citations.] In addition, the notice provided must specify the authority relied upon and must advise of

the specific grounds and conduct on which sanctions are to be based.” (*Parker v. Harbert* (2012) 212 Cal.App.4th 1172, 1178.)

Imani’s sanctions requests satisfied due process requirements. Imani’s initial request for sanctions was filed in February 2019. He specified both the authority (Family Code section 271) and the grounds (Leslie’s refusal to comply with court orders) supporting sanctions. This was adequate notice. Leslie also had an opportunity to be heard on the issue of sanctions. Indeed, Leslie in fact filed a response setting forth the basis for her argument that Imani’s sanctions request should be denied. Nor could she have believed that the sanctions request was no longer at issue as Imani reiterated his request for sanctions in late November 2019 and argued that Leslie had the ability to pay sanctions out of the proceeds from the sale of the residence. During the year that passed before the November 2020 hearing, Leslie had no lack of further opportunities to address Imani’s request for sanctions in writing, and she also had the opportunity to do so at the November 2020 hearing. Accordingly, her due process rights were not violated.

Leslie also asserts that the court erred in failing to consider the parties’ income, assets, and liabilities.<sup>6</sup> The court is required to consider any evidence of that variety that is presented, but it may impose sanctions so long as the award will not impose an unreasonable financial burden. (Fam. Code, § 271.) The record does not reflect that the court failed to consider any evidence that was presented. Since the award was ordered to be paid out of the proceeds from the sale of the residence, the trial court could have reasonably concluded that the sanctions award would not impose an unreasonable financial burden on Leslie. We find no abuse of discretion.

---

<sup>6</sup> Leslie also contends, in the section of her brief concerning the sanctions order, that the court failed to consider the tax consequences of its order that the residence be sold. As she provides no authority for this argument or any analysis that links it to the sanctions order, we consider any contention in this regard to be forfeited.

***J. Insufficient Time Claim***

Leslie argues that she was afforded insufficient time to present her case at the November 2020 trial. This claim was not preserved for appellate review because the record does not reflect that she made any request for additional time at the November 2020 trial.

**III. DISPOSITION**

The trial court's February 2021 orders are affirmed.



---

ELIA, ACTING P.J.

WE CONCUR:

---

BAMATTRE-MANOUKIAN, J.

---

WILSON, J.